

SUPPLEMENTAL REPLY
TRANSMITTAL OF APPEAL BRIEF (Large Entity)

DEC 06 2005

Docket No.
250901/00

In Re Application Of: Kimikazu Matsumoto

Application No.
09/929,488

Filing Date
August 15, 2001

Examiner
T. Rude

Customer No.
21254

Group Art Unit
2883

Confirmation No.
1362

Invention:

ACTIVE MATRIX TYPE LIQUID CRYSTAL DISPLAY DEVICE

COMMISSIONER FOR PATENTS:

Supplemental Reply

Transmitted herewith in triplicate is the ~~Appeal~~ Appeal Brief in this application, with respect to the Notice of Appeal filed on
June 21, 2005

The fee for filing this Appeal Brief is: None

- ☐ A check in the amount of the fee is enclosed.
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Dated: 12/6/05

Frederick E. Cooperrider, Esq.
Registration No. 36,769
(703) 761-4100

McGinn Intellectual Property Law Group, PLLC
8321 Old Courthouse Road, Suite 200
Vienna, Virginia 22182-3817

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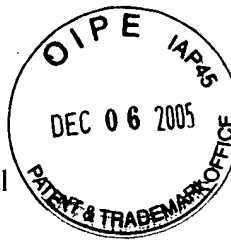
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Appellants' Supplemental Reply Brief on Appeal
S/N: 09/929,488



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of

Matsumoto, Kimikazu

Serial No.: 09/929,488

Group Art Unit: 2883

Filed: August 15, 2001

Examiner: Rude, T.

For: **ACTIVE MATRIX TYPE LIQUID CRYSTAL DISPLAY DEVICE**

Commissioner of Patents
Alexandria, VA 22313-1450

APPELLANT'S SUPPLEMENTAL REPLY BRIEF ON APPEAL

Sir:

Appellant respectfully provides the following reply to update, on the record, Appellant's two specific issues addressed in the Appellant's Reply Brief on Appeal, filed on June 21, 2005, and subsequent comment by Supervisory Patent Examiner Font in the Office Action mailed October 12, 2005, advising Appellant of the disposition of the Petition Under 37 CFR §1.181 to Admit Entry of Claims 18-20 for Purpose of Appeal, also filed on June 21, 2005.

In that Office Action dated October 12, 2005, Supervisor Font advised Appellant that the Petition had been dismissed. However, in the final paragraph of that Office Action dated October 12, 2005, Supervisor Font makes a number of comments that Appellant understands constitute a part of the official record, as presented to the Board for its review.

Because Appellant understands that these comments, which clearly address the substance of the matter under review, will be part of the record as presented for review, Appellant submits this Supplemental Reply Brief on Appeal, since it is understood that the Docket 250901/00 (NEC.209)

statements in this final paragraph constitutes a supplemental Examiner's Answer that surreptitiously adds the weight of Supervisor Font's professional opinion stated therein to the Examiner's Answer having a mailing date of April 21, 2005.

In accordance with §41.41 of the 37 CFR Parts 1, 5, 10, 11, and 41 Rules of Practice Before the Board of Patent Appeals and Interferences; Final Rule, published in the Federal Register, Vol. 69, No. 155, Thursday, August 12, 2004, Appellant, therefore submits this Supplemental Reply Brief on Appeal in order to respond to the additional comments entered into the record by Supervisor Font.

First, for the record, Appellant understands that claims 18-20 are indeed subject to rejoinder, in accordance with MPEP §§ 809.03, 821.04, and 714.14, pending review of the allowability of the device claims currently under review.

Second, in this final paragraph of the response to the Petition, Supervisory Patent Examiner Font states:

"The reply brief filed 21 June 2005 has been entered and considered. However, Applicant's statement that the "sweet spot" is clearly shown in Figure 8 is in error (not supported). Please note that Figure 8 merely shows two curves that cross at an arbitrary point that is dependent upon the two Y-axis scales (which may be selected arbitrarily). No "sweet spot" is indicated anywhere in Figure 8 nor is it in anyway supported as unexpected results anywhere in the originally presented Application. Rather, Applicant merely argues essentially a personal preference within an expected performance domain which is a function of intended use. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal."

APPELLANT'S RESPONSE TO THIS FINAL PARAGRAPH

Appellant remains totally baffled by the persistent failure of the USPTO, in the present Application, to recognize the significance of the Appellant's disclosure and, in general, the significance of any patent disclosure.

1. The first and second paragraphs of 35 USC 112 explains the purpose of an Application specification, as follows:

"The specification shall contain a written description of the invention, and of the manner and process of making an using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out this invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the application regards as his invention."

The specification is not required to contain magical legal phraseology, such as "unexpected results". Appellant submits that this legal characterization and phraseology (e.g., "unexpected results") is the product of prosecution because the Examiner insists that the very broad range of twist angle described in the cited prior art would routinely be narrowed to the very small range described in accordance with the present invention.

2. Appellant has repeatedly maintained that the present invention contributes to the art because none of the prior art references suggests that twist angle be used as a parameter having multiple aspects, let alone the conflicting aspects shown in Figure 8 of the present Application.

Stated slightly differently, as the United States Court of Customs and Patent Appeals held in *Antonie*, 559 F.2d 618 (1977):

"The PTO and the minority appear to argue that it would always be obvious for one of ordinary skill in the art to try varying every parameter of a system in order to optimize the effectiveness of the system even if there is no evidence in the record that the prior art recognized that particular parameter affected the result. As we have said many times, obvious to try is not the standard of 35 U.S.C. §103. Disregard for the unobviousness of the results of "obvious to try" experiments disregards the "invention as a whole" concept of §103, and overemphasis on the routine nature of the data gathering required to arrive at appellant's discovery, after its existence became expected, overlooks the last sentence of §103." (Note: emphasis is in the holding itself.)
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However, conceding that the phraseology “unexpected results” does not *per se* appear in the original specification, the explanation of why it is an unexpected result in view of conventional designs is clearly described in the specification in lines 1-6 on page 2, lines 9-17 on page 3, lines 9-23 on page 7. Appellant submits that the “unexpected results” is inherent in the presentation in Figure 8 as a single presentation that shows how twist angle concurrently affects two conflicting performance results. The valley formed by these two curves clearly shows a “sweet spot” at approximately 2.75 degrees of twist angle.

3. Relative to Supervisory Examiner Font’s comment that “*Please note that Figure 8 merely shows two curves that cross at an arbitrary that is dependent upon the two Y-axis scales (which may be selected arbitrarily)*”, Appellant respectfully traverse this statement.

Appellant submits that, contrary to SPE Font’s statement placed on the record, one having ordinary skill in the art would readily recognize that the figures represent Appellant’s actual engineering data and are, therefore, anything but arbitrary.

Moreover, Appellant submits that claims which specify a very narrow range of less than 4⁰ (e.g., claim 1), or even less than 0.5⁰ (e.g., claim 2), could hardly have been based on an “arbitrary point” on “arbitrary axes”.

4. Finally, relative to Supervisory Examiner Font’s that there is somehow a “function of intended use”, Appellant submits that there is no “intended use” language in either the claims or the specification. The description is clearly a description of structure and precise angles intentionally placed in that structure during fabrication. There is no “intended use” involved in this description. Supervisory Examiner Font appears to be improperly attempting to confuse the angles defined as used for setting parameters during a fabrication process as somehow being “intended use.”

However, Appellant submits that “intended use” is an entirely different concept that relates to how the completed device would be intended to be used, not to the description of settings of parameters placed within the device during fabrication.

Appellants' Supplemental Reply Brief on Appeal
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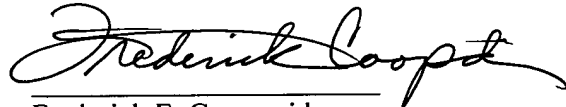
CONCLUSION

In view of the foregoing, Appellants submit that claims 1-17 are clearly patentably distinct from the prior art of record and in condition for allowance upon remand and that claims 18-20 are subject to rejoinder, pending whatever amendments might be necessary to provide wording appropriate for rejoinder.

Please charge any deficiencies and/or credit any overpayments necessary to enter this paper to Attorney's Deposit Account number 50-0481.

Respectfully submitted,

Dated: 12/6/05



Frederick E. Cooperrider
Reg. No. 36,769

McGinn Intellectual Property Law Group, PLLC
8231 Old Courthouse Road, Suite 200
Vienna, VA 22182-3817
(703) 761-4100
Customer Number: 21254